

SPECIAL CIVIL APPLICATION No 1378 of 1987

Hon'ble MR.JUSTICE D.P.BUCH

=====

- [illegible]

- M L PANCHAL

Versus

STATE OF GUJARAT

Appearance:

MR HB SHAH for Petitioner

Ms. Katha Gajjar for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/11/1999

ORAL JUDGEMENT

This is a petition under Article 226 of the Constitution of India, challenging the order of the Collector, Sabarkantha District at Himatnagar dated 26th March, 1987 terminating the services of the petitioner for want of clearance of Revenue Qualifying Examinations

in accordance with the rules.

2. The short question that has arisen in the present case is that the petitioner has already availed of three chances in regular course and one additional chance for the said examination. However, the petitioner could not succeed in any of the said four chances and, therefore, his services came to be terminated by the aforesaid order of the Collector, Sabarkantha dated 26.3.1987. The petitioner claims that he was serving as a Probationer Deputy Mamlatdar and he was employed as such since July 12, 1982 as he was recruited under direct selection for the said post. The petitioner claims that he was entitled to one more chance for the said examination and the said chance has not been afforded to him and, therefore, termination of his service for want of clearance of Revenue Qualifying Examination (hereinafter referred to as 'RQE') is illegal and against the provisions of rules. The petitioner, therefore, has challenged the said order of termination dated 26.3.1987. The petitioner further claims that he should be given a further opportunity to appear at the RQE under the Revenue Qualifying Examination Rules.

3. Notice was issued to and served upon the State Government. Ms. Katha Gajjar, learned AGP has appeared on behalf of the State and has contested the petition. The main contention of the State is that the petitioner has been given in all five opportunities and, therefore, no further opportunity was required to be given to the petitioner to appear at the RQE. In the alternative, it has been pleaded by the State that the petitioner was not entitled to additional i.e. fifth chance for the said examinations and, therefore, the petition is without any ground and hence it may be dismissed with costs of the respondent.

4. I have heard the learned Advocates for the parties and perused the papers including the RQE Rules,

5. Now it may be stated at the outset that there is no dispute that the petitioner was directly appointed as Deputy Mamlatdar under a direct selection for the said post. It is also an admitted fact that he was required to clear the RQE in accordance with the rules. It is further admitted that the petitioner appeared for the said examinations on three occasions and he did not get through the said examinations in any of the three chances.

6. Then, the record shows that one more chance was

given to the petitioner because he was not allotted seat number in accordance with the order of the Revenue Department dated 21.5.1986 placed at Annexure 'A' at page 8. Therefore, fourth chance was given to him and the petitioner could not get through the said examination even at the said fourth chance.

7. Therefore, his services were to be terminated as per the case of the respondent and accordingly his services have actually been terminated by the aforesaid order dated 26.3.1999.

8. Learned Advocate for the petitioner has drawn my attention to the provisions contained in the Rules. These rules are called "The Gujarat Lower Revenue Qualifying Examination Rules, 1978" These rules have been amended from time to time. It would therefore, be necessary to refer to the old rules as well as the amended rules.

9. Both the parties have relied upon Rule 6 of the said rules of 1978. Sub-rule (1) of Rule 6 of the said rules is relevant for this purpose. Therefore, it is reproduced as follows:

"6(1) If a direct recruit fails to pass the examination as required under these rules, his service shall be terminated,

Provided that if in the case of any such person the State Government is satisfied that he could not pass the examination at which he had his last chance for reasons beyond his control or that he failed to pass such examination by a very narrow margin, the State Government may, after recording reasons in writing, give him one more chance to appear at the examination."

10. Now a bare reading of rule 6(1) of the said rules makes it clear that a direct recruit has to pass the said examination and if he fails to do so, his services would be liable to be terminated.

11. Then the proviso says that if in the case of any such person the State Government is satisfied that he could not pass the examination at which he had his last chance for reasons beyond his control or that he failed to pass such examination by a very narrow margin, the State Government may, after recording reasons in writing, give him one more chance to appear at the examination.

12. The proviso would, therefore, make it clear that even for this purpose the candidate or the person in service does not possess any absolute right to appear at the examination for the purpose. Having regard to the proviso to Rule 6(1) of the said rules, the person concerned is required to satisfy the State Government that he could not pass the examination for reasons beyond his control or that he failed to pass the examination by a very narrow margin. If these two elements or ingredients exist, then the Government has discretion to permit him to one more chance.

13. It appears that the above said proviso has been subsequently amended by the Gujarat Lower Revenue Qualifying Examinations (First Amendment) Rules, 1982. Rule 4 of the said amended rules states that in sub-rule (1) of rule 6, in the last line of the proviso for the words "give him one more chance", the words "give him not more than two chances" shall be substituted.

14. Therefore, it is very clear that though the original rules 6(1) has a proviso, requiring one more chance be given to the examinee, the amended rule referred to above speaks of two chances.

15. Now rule 5 of the said rule provides that the examination shall have to be passed in not more than three chances whereas Rule 6(1) originally provides for one more additional chance on the ground mentioned in the proviso to rule 6(1) of the said rules referred to hereinabove. By way of amendment, the State Government can now give two more chances to appear at the examinations to the defaulting candidate.

16. So a bare reading of rule 5 and 6(1) of the said rules now make it clear that ordinarily the candidate is required to pass examination in not more than three chances as per rule 5 and as per rule 6(1) two additional chances can be given to the petitioner.

17. Learned AGP has contended that five chances have already been given to the petitioner and, therefore, he is not entitled to one more chance.

18. Out of those five chances, one of the chances can be gathered from an order of the Government in Revenue Department dated 21.5.1986 placed at Annexure 'A'. The order of the Government says that the application form in respect of the petitioner was forwarded to the concerned office by the Collector on 16.12.1985, but seat number could not be allotted to the petitioner and therefore the

petitioner could not appear at the examination and, therefore, one more chance should be given to the petitioner to appear at the RQEs. Now this is in fact the fourth chance and not the fifth chance because the examination at which the petitioner could not appear on account of non-allotment of seat number should not be treated to be a chance given to the petitioner. If that chance is excluded then it is an admitted position that the petitioner was given in all four chances and not five chances.

19. Now as said above, the petitioner could be given fifth chance in accordance with the amended rule 6(1) of the said rules. As said above, it cannot be a matter of right for the petitioner to appear at the fifth chance at the said examination. It would be open to the petitioner to satisfy the State Government with regard to existence of one of two ingredients indicated hereinabove and mentioned in the proviso to rule 6(1) of the said rules. If the petitioner makes appropriate submission and representation to the State Government and if the Government is satisfied with regard to the existence of either of the or both the said ingredients mentioned in the proviso to sub-rule (1) of rule 6 of the said rules, then in that event, the State Government can permit fifth chances which may be the last chance, to the petitioner.

20. It seems that the State Government appears to have considered the said chance as a chance given to the petitioner which was, in fact, not a chance because no seat number was allotted and the petitioner could not avail of the said chance for want of allotment of seat number. Therefore, the State Government seems to have committed illegality in considering the said chance as a chance given to the petitioner.

21. In the alternative, it appears that the State Government had in its mind, the old and unamended provision of the proviso to sub rule (1) of rule 6 of the said rules which provided for only one chance in addition to the three chances provided in rule 5 of the said rules. Therefore also the reading of the rules was improper.

22. Any way, the petitioner was entitled to three chances in accordance with rule 5 and he should apply for two more chances in accordance with the proviso to rule 6(1) of the said rules. Therefore, he could have been in all five chances. Admittedly, five chances have been given to him and therefore, the petitioner is still at liberty to make representation to the State Government

and to satisfy the State Government with regard to the existence of the ingredients of the proviso to rule 6(1) of the said rules. If the State Government is satisfied with regard to existence of the said two ingredients or any of them, then the State Government would naturally permit fifth chance to the petitioner.

23. To this extent, there is a clear merit in favour of the petitioner. The petitioner has not been afforded opportunity with regard to fifth chance by the State Government on the aforesaid consideration.

24. In the above view of the matter, the State Government was not justified in terminating the services of the petitioner immediately without considering the case for the grant of fifth and last chance in accordance with the proviso to rule 6(1) of the said rules. To that extent, the action of the State Government is illegal and against the provisions of the said rules.

25. The learned AGP has submitted that the petitioner has been given five chances but as said above the submission is not in accordance with the material available on record.

26. She has alternatively pleaded that the petitioner is not entitled to a fifth chance. Now on this point, the rule has been referred to hereinabove and it is not explained as to how the petitioner would not be entitled to a fifth chance. In that view of the matter, the said defence advanced on behalf of the respondent-State Government is not acceptable and the respondent was not justified in terminating the services of the petitioner for not passing the RQE within the chances to be provided to the petitioner. Therefore, the said order is against the provisions of rules and hence requires to be quashed.

27. At the same time, the petitioner should make a representation for giving him fifth and last chance for appearing at the Examination and on receipt of the said representation, the State Government should objectively consider the same and if the State Government is satisfied with regard to the existence of the ingredients of the proviso to sub-rule (1) of rule 6, then the State Government shall provide fifth and last chance to the petitioner. To that extent, the petition succeeds.

28. In view of the aforesaid, the order of the Collector, Sabarkantha District at Himatnagar dated 26.3.1987 placed at Annexure 'B' is hereby held to be against the provisions of the rules and is, therefore,

ordered to be quashed.

29. The petitioner shall be at liberty to make representation to the State Government for providing him the fifth and the last chance for appearing at the RQE and if the Government, on receipt of such representation, is satisfied with regard to the existence of the ingredients mentioned in the proviso to rule 6(1) of the Gujarat Lower Revenue Qualifying Examination Rules, 1978, then the State Government shall provide fifth and last chance to the petitioner.

30. The seniority of the petitioner, if he is permitted to appear in the examination, even if he gets through, will depend upon the provisions made in the said rules. In these circumstances, the petition is partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

....
msp.